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In re Application of METCALF et al :
U.S. Application No.: 09/674,368 :
PCT Application No.: PCT/US99/09486 :
Int. Filing Date: 29 April 1999 :
Priority Date Claimed: 29 April 1998 : DECISION
Attorney Docket No.: ACY-33377 :
For: VACCINES CONTAINING :
RECOMBINANT PILIN AGAINST NEISSERIA :
GONORRHOEAE OR NEISSERIA MENINGITIDIS :

This is in response to applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 13 February 2004.

BACKGROUND

On 29 April 1999, applicant filed international application PCT/US99/09486, which claimed priority of an earlier United States application filed 29 April 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired on 29 October 2000.

On 27 October 2000, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 11 June 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) along with a Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/920) and a Raw Sequence Listing Error Report, which indicated that a substitute CRF must be filed.

On 11 December 2001, applicant filed a substitute CRF.

On 18 March 2002, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) along with a Raw Sequence Listing Error Report, which indicated that a substitute CRF must be filed.

International application PCT/US99/09486 became abandoned as to the United States for failure to timely respond to the Notification of Defective Response.

On 23 August 2002, applicant filed a substitute CRF.

On 11 March 2003, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

On 13 February 2004, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), applicant has provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 29 April 1999, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 27 October 2000.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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